

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re ELIZABETH L., a Person Coming  
Under the Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

LUIS L.,

Defendant and Appellant.

In re ELIZABETH L., a Person Coming  
Under the Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

STEPHANIE L.,

Defendant and Appellant.

F068743

(Super. Ct. No. 516828)

**OPINION**

F068917 & F069195

(Super. Ct. No. 516828)

**THE COURT\***

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q.  
Ameral, Judge.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and  
Appellant, Luis L.

---

\* Before Cornell, Acting P.J., Gomes, J., and Kane, J.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant, Stephanie L.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County Counsel, for Plaintiff and Respondent.

-ooOoo-

Luis L. and Stephanie L. (appellants) appeal from the juvenile court's dispositional order removing their two-year-old daughter Elizabeth from their custody.<sup>1</sup> Stephanie also appeals from the juvenile court's order denying her request under Welfare and Institutions Code section 388<sup>2</sup> to modify its dispositional order removing Elizabeth.

Appellants contend there was insufficient evidence to support the juvenile court's jurisdictional finding adjudging Elizabeth its dependent under section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect) and its order removing her from their custody. In addition, Stephanie contends the juvenile court abused its discretion in denying her section 388 petition without conducting an evidentiary hearing. We affirm.

### **PROCEDURAL AND FACTUAL SUMMARY**

Luis and Stephanie, a married couple, first came to the attention of the Stanislaus County Community Services Agency (agency) on July 20, 2013, when Stephanie took her then five-year-old niece G.R. to the hospital with second degree burns on her leg. At that time, Luis and Stephanie were caring for G.R. and her one-year-old brother, Matthew, as well as their own daughter Elizabeth, then 15 months old. G.R. and Matthew are the children of Stephanie's sister, Astrid.

---

<sup>1</sup> On our own motion we consolidate the appeals in our case numbers F068743 and F068917.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

On July 24, 2013, social worker Juan Zamora investigated the burn incident. Stephanie explained that Luis boiled a towel in a water and vinegar solution to place on her lower abdomen to relieve pain. Afterward, Luis left the pot of hot water and towel on a bench in the kitchen. G.R. went into the kitchen and Stephanie heard her say “ouch” and saw her run upstairs. G.R. showed Stephanie the burn on her leg but only after Stephanie assured her she would not get into trouble. Stephanie and Luis took G.R. to the hospital. Stephanie showed Zamora the medication and bandages they were given to treat the burn.

Zamora also spoke to G.R. She was clean, dressed appropriately and able to explain the difference between the truth and a lie. G.R. told Zamora her mother was far away and she brought her to live with her aunt and uncle. She said her mother drank and vomited a lot and talked to men and sat on their laps. She said her mother was mean to her and yelled and hit her. She said her aunt and uncle were nice to her and she liked living with them. G.R. said she saw her uncle put the hot rag on her aunt. Her leg hurt so she sat on the rag that was in the kitchen. After she was burned, she ran upstairs and cried. She did not want to tell her aunt because she was afraid she would get into trouble and have to return to her mother. She said her aunt and uncle took care of her and took her to the doctor. Zamora took pictures of the burn which was on the back of G.R.’s right leg.

Luis and Stephanie said they were concerned Astrid was using drugs and prostituting herself. They were interested in counseling services for G.R. and in applying for guardianship.

The agency determined that G.R.’s burn was accidental and not the result of Stephanie and/or Luis’s negligence. Zamora found an address for Astrid in Anaheim, California and sent her a letter.

On August 8, 2013, Astrid and Zamora spoke by telephone. Astrid said she gave Stephanie a notarized letter indicating she was leaving G.R. and Matthew in Stephanie's care. The letter was notarized on May 31, 2013, and granted Stephanie full custody of the children because Astrid was not financially able to care for them. Astrid said she terminated a violent relationship with her ex-boyfriend and she thought she and the children needed to leave the area. She went to Stephanie's house hoping she and the children could stay there, but Luis would only let the children stay so she left them there. She denied using drugs, abusing alcohol and prostituting.

Astrid told Zamora she did not know why she was being investigated for child abuse and neglect. Zamora explained that the letter was simply to inform her there was an investigation involving her children. Astrid said Stephanie did not tell her that G.R. was burned. She also said she tried to pick the children up but could not find a ride and did not remember Stephanie's address. Astrid said Stephanie only wanted to care for the children because she received county aid.

Less than an hour later, Zamora received a call from Stephanie who was nervous because Astrid called her and said she wanted to pick up the children. Stephanie said she had filed for guardianship and wanted the agency to take the children so that Astrid could not get them. Zamora explained that if Astrid wanted the children and was acting appropriately, she had a legal right to take them. Stephanie hung up the phone.

On August 9, 2013, Luis called Zamora upset that Zamora was not helping them. Luis said when the children first arrived they were behind on their immunizations and Matthew was malnourished. Zamora told Luis that the doctors were mandated reporters and if there had been a concern they would have reported it to child protective services. Zamora explained the agency could not just remove children based on allegations and without investigating.

The same day Stephanie filed a petition to be appointed the children's guardian. She stated her reasons for applying for guardianship were that Astrid was homeless and could not financially support the children and the agency told her to file for guardianship. She also checked the box indicating that Astrid agreed to the guardianship.

On August 20, 2013, the superior court awarded Stephanie and Luis temporary custody of G.R. and Matthew and ordered Astrid restrained from removing the children from Stephanie and Luis's custody.

On September 24, 2013, the agency received a report that G.R. went to school the day before with a bump on the left side of her forehead, scratches on her cheek and a swollen nose. G.R. told the aide and the administrative assistant she fell down the stairs prior to school and that her head and neck hurt. When Stephanie arrived to pick G.R. up, the assistant told her about G.R. falling down the stairs. G.R. quickly denied it saying, "I never said that Mommy."

The aide also said the week before G.R. had a strange cut, a big gash, on the inside of her lower eyelid. G.R. said she slipped in a restaurant. When Stephanie was asked about it, she said G.R. slipped on some ice at a restaurant and cut her eye. Stephanie insisted that she took G.R. to the hospital and that G.R. lost a tooth at school the same day. The aide said the following day Luis and Stephanie went to the school wanting to know why the school staff was paying so much attention to G.R. and why the staff did not notice that G.R. lost a tooth and had a cut on her lip from being pushed to the ground by a boy. After investigating, the school staff determined that G.R. was not pushed at school and her tooth did not fall out at school. When Stephanie and Luis were told, they called the school staff "stupid and dumb." G.R. disclosed that Stephanie was hitting her and her brother, leaving marks, bruises and burns and coaching her to say that Astrid was injuring her.

Social worker Michelle Silveira went to Stephanie and Luis's home with Detective Jesse Tovar to investigate. Stephanie told Silveira the children were in and out of their care because Astrid kept changing her mind about wanting to keep them. Silveira noticed that Matthew was very thin for his age and appeared to have numerous bruises and scars in various stages of healing on his stomach and legs. Stephanie said the marks on Matthew were not bruises but the natural appearance of his skin. She said she had medical documentation to prove that but did not provide any.

Luis and Stephanie agreed to let Silveira and Tovar speak to G.R. G.R. denied falling down or telling anyone that she fell. She said she was pushed at school by another child, causing her to fall and lose a tooth. G.R. told Silveira and Tovar she did not like her real mom and that one time her mother hit her with a tablet and cut her eye. G.R. denied that Stephanie or anyone else in the home hit her.

Silveira told Stephanie and Luis to take Matthew to the emergency room. On her way there, Silveira stopped at Elizabeth's daycare to check her for injuries or signs of abuse or neglect. She found Elizabeth well-groomed and well-dressed with no visible marks or bruises. Elizabeth appeared healthy and the staff did not report any concerns about her.

At the emergency room, a nurse told Silveira that Matthew weighed 15 pounds which was very underweight for his age. Matthew had multiple bruises all over his body and burn marks in various stages of healing. G.R. was also examined and found to have a large bruise on her right hip and buttocks. G.R. stated that her mother hit her with a belt and a hard toy on at least two different occasions.

Silveira contacted the Stanislaus County Sheriff's Department and Sheriff's Detective Megan Brazil met her at the emergency room. Brazil described Matthew as "extremely thin" and "lethargic." Brazil estimated Matthew had 15 old scars that appeared to be burns or injuries that healed. Matthew had bruises on his head and face

and a fungal infection on his scalp and in numerous other places. Matthew did not move around, make any facial expressions or cry when he was injected with a needle. He reacted only when he saw the food cart and G.R. was given a peanut butter and jelly sandwich. Matthew became very upset and tried to get to the food. Within an hour and a half he ate four ounces of apple sauce, six ounces of Greek yogurt, half a peanut butter and jelly sandwich and an entire banana. The staff had to remove the food cart because Matthew was insatiable and upset he could not continue eating.

Stephanie told Brazil that Astrid usually took one child at a time and usually took Matthew. Every time Astrid returned the children they had significant bruising and scars and were afraid to return to Astrid. Astrid returned Matthew to her around September 17. He was covered with bruises and extremely thin. Stephanie said she knew that Astrid physically abused the children. She saw Astrid hit G.R. with a belt two weeks before because G.R. did not want to go with her. She said she yelled at Astrid to stop but Astrid hit G.R. several more times. G.R. ran and hid and Astrid left without her.

Brazil entered a room where G.R. was coloring and asked if she had any "owies." G.R. pulled up her hospital gown and exposed her buttocks where there were deep purple bruises along her backside and thighs. The bruising extended in between the cheeks of her buttocks all the way to her anus. One of the large bruises on her leg was consistent with being struck with a belt. G.R. said Astrid hit her with a belt.

Brazil asked Stephanie if she knew how injured the children were and why she did not contact law enforcement. She said she did not know how injured they were and did not want to get the police involved.

Silveira took G.R. and Matthew into protective custody and filed a dependency petition on their behalf alleging they were seriously physically harmed and that Stephanie and Luis failed to protect them. (§ 300, subds. (a) & (b).)

The following day, Detective Joseph Delgado interviewed G.R. who initially stated that her mother hit her with a belt. She later stated Stephanie hit her with a stick and hurt her. She also stated Stephanie pulled her ear, hit her and hurt her butt. She said Stephanie told her to tell others that her mother hit her with a belt. G.R. also stated that Stephanie hurt her by putting a hot towel on her. She said she did not see Stephanie hit Matthew but heard the sound of her hitting him and saw the marks on him. She said Stephanie left bruises everywhere on Matthew's body. She said when she had bruises or marks, Stephanie kept her home from school. Once she told the teacher her neck hurt and Stephanie put hot sauce in her mouth.

Tovar interviewed Stephanie and Luis at the Sheriff's substation. He read Stephanie her rights and she agreed to speak to him. She said she had had G.R. since June 2013. She said Matthew was with Astrid from August 20 to approximately September 16, 2013. According to Stephanie, it was during that time that Matthew received his marks and bruises. She denied putting hot sauce in G.R.'s mouth, hitting her or spanking her with a stick. She said she did not see G.R.'s bruises because she did not bathe her. Luis denied that Stephanie hit the children.

Stephanie told Tovar that G.R. lies and gave an example. G.R. went to the neighbor's house one morning between 6:00 and 7:00 a.m. and told the neighbor that her mom (referring to Stephanie) was hitting her and that her mom was also hitting her dad. An officer responded to Stephanie's house and observed the family to be fine.

Stephanie also told Tovar she never told on Astrid for fear her sister would be deported. She said G.R. probably accused her of abusing her because she wanted to return to her mother.

Stephanie was arrested for physically abusing G.R. and Matthew. Elizabeth was allowed to stay in Luis's care provided he followed a safety plan which forbade



Stephanie from being around Elizabeth. Luis signed the plan. The day after Stephanie's arrest, Luis bailed her out of jail.

On September 30, 2013, Silveira went to Luis and Stephanie's home. Stephanie was in the home and Elizabeth was in daycare. Stephanie said she had been spending the night because she did not have anywhere else to stay. She and Luis questioned why the safety plan was necessary. The agency decided Stephanie and Luis were unlikely to comply with the plan and took Elizabeth into protective custody.

The agency filed a dependency petition alleging Elizabeth was at risk of serious physical harm (§ 300, subd. (a)) and that Stephanie and Luis failed to protect her (§ 300, subd. (b)). Elizabeth was initially placed in foster care and ultimately with a paternal uncle.

The juvenile court ordered G.R. and Matthew detained and the agency placed them in foster care. The juvenile court subsequently sustained the allegations in the petition and ordered the case transferred to Orange County, the county of Astrid's residence.

On October 1, 2013, Astrid contacted the agency and explained that she left the children in Stephanie's care in June 2013. She visited the children on October 8 and met with the agency staff who explained the situation and showed her pictures of the children and their injuries. Astrid sobbed when she saw the pictures and was devastated by the abuse her children suffered. She said she did not know about the abuse and was sick about it. She said she was doing better, was employed and living with her boyfriend who treated her well. She provided text messages in Spanish which convinced the agency staff the children were not with her during the summer and that she was trying to get them back. The messages also revealed that Stephanie was trying to solicit money from Astrid for the children's expenses and that Stephanie was receiving benefits from the county for the children.

After meeting with the staff, Astrid visited the children. When she saw them she cried and G.R. clung to her and was clearly happy to see her. During the visit, G.R. stated to Astrid in Spanish “Mommy, you will be mad because Tia made me say things about you that are not true.” At the end of the visit, G.R. cried and would not let go of her mother.

An agency representative evaluated Astrid’s home in Anaheim and spoke to her and her boyfriend. Astrid provided proof that she took Matthew to the doctor and in May 2013 he weighed over 17 pounds. She had pictures of him in which he was chubby. The juvenile court returned G.R. and Matthew to Astrid under family maintenance.

The juvenile court ordered Elizabeth detained and set a contested jurisdictional hearing. Stephanie and Luis withdrew their guardianship petition and the guardianship proceedings were terminated.

On January 2, 2014, the juvenile court convened the contested jurisdictional/dispositional hearing (combined hearing) as to Elizabeth. At county counsel’s request, the DVD of G.R.’s interview was entered into evidence without objection and played for the court.

County counsel called Luis to testify and tried to establish when the children were in his and Stephanie’s custody. Luis said G.R. had been in their care since June 2013 and had not returned to Astrid. He also said G.R. was with them around the Fourth of July and was thin and bruised. County counsel asked Luis if the bruise on G.R.’s hip had been there since June of 2013. He said the bruise occurred when Astrid came to their home and hit her with a belt. Asked why he did not contact child protective services, he stated “I don’t know.” He also explained that the burn on her leg occurred after she sat on the towel that he left on a wooden bench.

Luis testified that Matthew was also with them on the Fourth of July and was also thin and bruised. He returned to Astrid from August 20 to September 16, 2013.

However, Luis also testified he first saw Matthew's bruises when Astrid returned Matthew to them in September. He knew they were in various stages of healing and he also recognized that Matthew was extremely malnourished. He agreed that "perhaps" Matthew needed immediate medical attention but he did not seek it for him. He never suspected that Stephanie was causing Matthew's bruises.

The juvenile court asked Luis how long he and Stephanie tried to get help for Matthew. Luis could not remember but after county counsel showed him Matthew's immunization records, he remembered taking him to the doctor on several dates including July 10, 2013. Luis said the doctor told them Matthew was malnourished and needed treatment. However, Luis said he and Stephanie did not take Matthew to the emergency room because they were feeding him and they did not want to get the family in trouble or cause Astrid to be deported. He also believed he and Stephanie needed authorization from Astrid to obtain medical treatment for Matthew even though they were able to have him immunized without it.

Luis further testified that he complied with the safety plan by not letting Stephanie stay in the home and that she had not lived with him since she was arrested on September 25. He acknowledged that Stephanie was at their home on September 30, but said Elizabeth was at daycare. He said he never allowed Stephanie to be around Elizabeth. He said he wanted the family to be together.

Luis testified he never intentionally harmed G.R. or Matthew and never saw Stephanie hurt them. He said he had been going to parenting classes and anger management counseling. He said he realized it was a mistake not to take Matthew to the doctor and he felt badly about it.

The juvenile court adjudged Elizabeth a dependent under section 300, subdivisions (a) and (b), ordered her removed from Luis and Stephanie's custody, ordered reunification services for them both and set a six-month review hearing for May 2014.

In ruling, the juvenile court commented on the evidence and explained its reasoning. The court noted that the declaration attached to the petition for guardianship stated the children had been in Luis and Stephanie's care since May 30, 2013, and did not mention that Astrid was abusing them. In addition, after getting temporary guardianship of the children, Luis and Stephanie allowed Astrid to take custody of them and took no action about the abuse. The court stated:

"[W]hen I look at these pictures of these bruises that [Luis] says were done at the hands of the mother to [G.R.], I am appalled .... I mean, these are very significant bruises. They are not just a little bit. These are extremely significant.

"And ... at the very least, [Luis] is guilty of a failure to protect. And, quite frankly, I really question that the mother of the two children really was the one who inflicted these injuries.

"I'm also very concerned because, at the very least, that these parents had the children, temporary custody of them, from August 20th, 2013 until the removal on September 24, 2013. And even in five-week's time, if you were feeding the child ... food of any substance, this child would not look like a skeleton, and Matthew looks like a skeleton .... [Y]ou can count his ribs, and I just find that utterly and completely appalling, and I consider that physical abuse. And there are so many injuries.... Matthew from head to toe is beaten with bruises and scars and sores and marks. ... And I don't believe that all of this was done by his mother. I believe that [Luis and Stephanie] had a part in it or they, certainly, never protected either one of these children.

"I also don't believe that [G.R.] sat down on this scalding hot towel. ... if [the towel] was already used on [Stephanie], there is no way that it would have caused these burns to [G.R.] ...."

"I admit that [G.R.'s] interview is confusing, and I, certainly, acknowledge that if this were a criminal court, that I would have a hard time finding [G.R.'s] testimony to be credible beyond a reasonable doubt, but for purposes of jurisdiction, burden of proof is preponderance of the evidence.

“I believe that both [Stephanie and Luis] seriously failed to be protective of either one of these children, and I believe that Stephanie was, indeed, the perpetrator of the abuse.”

On February 11, 2014, Stephanie filed a section 388 petition asking the juvenile court to vacate its dispositional order removing Elizabeth from her custody based on what she claimed was new evidence that Astrid abused G.R. and Matthew. Stephanie attached copies of posts on Facebook between her and Astrid and their sister Amanda all made in September and October of 2013. In the only post between Stephanie and Astrid, Stephanie told Astrid she needed her to bring Matthew to her. Astrid allegedly replied “Yes, mija, thank you, I will take him to you on September 15th.” In posts from Amanda to Astrid, Amanda appears to be urging Astrid to admit that she abused the children. In one post, Amanda wrote, “they are accusing [Stephanie] of hitting [G.R.] and Matthew, you must respond for what you did, it was you, not her.” In posts to Amanda, Astrid wrote “I regret hitting them, especially ... Matthew” and “I can’t they will send me to jail and have me deported” in response to Amanda’s urging that she tell the truth and accept the consequences of her actions.

The juvenile court denied Stephanie’s section 388 petition, finding she failed to state new evidence or a change of circumstances. The court explained that the “new evidence” Stephanie alleged was all dated prior to the contested jurisdictional hearing held in January 2014.

This appeal ensued.

## **DISCUSSION**

### **I. Substantial Evidence Supports the Jurisdictional Finding under Section 300, Subdivision (a)**

Luis and Stephanie contend there was insufficient evidence for the juvenile court to assume jurisdiction of Elizabeth. We disagree.

The juvenile court may adjudge a minor child its dependent under section 300 if it determines the child is described under any one of several subdivisions. Here, the juvenile court found that Elizabeth was described by two of these subdivisions: (a) (“The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian”) and (b) (“The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child ...”). (§ 300, subds. (a) & (b).)

We review the juvenile court’s jurisdictional findings to determine whether there is substantial evidence, contradicted or uncontradicted, to support them. In doing so, we draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court and we review the record in the light most favorable to the court’s determination. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*Ibid.*)

As Stephanie and Luis point out, there is no evidence Elizabeth was physically abused. However, “section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a ‘substantial risk’ that the child will be abused or neglected. The legislatively declared purpose of these provisions ‘is to provide maximum safety and protection for children who are currently being physically ... abused [or] neglected ... , and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a

child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citation.]” (*I.J., supra*, 56 Cal.4th at p. 773.)

Further, “[we] can affirm the juvenile court’s finding of jurisdiction over the [child] if any one of the statutory bases for jurisdiction ... enumerated in the petition is supported by substantial evidence. In such a case, [we] need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ [Citation.]” (*I.J., supra*, 56 Cal.4th at p. 773.) In this case, subdivision (a) of section 300 most closely describes Elizabeth’s situation. Accordingly, we will focus on that subdivision.

Section 300, subdivision (a) applies if: “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

Stephanie contends section 300, subdivision (a) does not apply to Elizabeth because Elizabeth is not G.R. and Matthew’s sibling. This issue was raised and rejected in *In re Marquis H.* (2013) 212 Cal.App.4th 718 (*Marquis H.*)

In *Marquis H.*, the San Diego County Health and Human Services Agency filed a petition on behalf of a minor, Marquis, who was 10 years old. (*Marquis H., supra*, 212 Cal.App.4th at p. 721.) Although the petition did not allege that Marquis was abused by his parents, it did allege that Marquis’s parents had subjected their grandchildren, who lived with Marquis and his parents, to serious physical abuse. (*Ibid.*) Like Stephanie,

Marquis's parents argued that section 300, subdivision (a) was inapplicable because the abused minors were not Marquis's siblings. (*Marquis H., supra*, at p. 725.)

The appellate court in *Marquis H.* rejected the parents' strict interpretation of section 300, subdivision (a), concluding "a single provision "cannot properly be understood except in the context of the entire dependency process." [Citation.]" (*Marquis H., supra*, 212 Cal.App.4th at p. 725.) The court stated:

"We do not read section 300, subdivision (a), as prohibiting the exercise of jurisdiction in situations other than those specified in the second sentence of the statute. In our view, the permissive language of the second sentence merely sets forth scenarios in which the statute may apply.... [¶] ... [¶] ... It would be absurd to interpret section 300, subdivision (a), to prohibit the court as a matter of law from exercising jurisdiction over a child whose parents had severely physically abused their own grandchildren who were also living in the home and under their exclusive care." (*Marquis H., supra*, 212 Cal.App.4th at pp. 725-726.)

We concur with the reasoning and holding in *Marquis H.* and conclude section 300, subdivision (a) applies to Elizabeth. It would be absurd to prevent the juvenile court from exercising jurisdiction over Elizabeth just because she is the cousin, rather than the sibling, of G.R. and Matthew who suffered serious physical abuse in the home they shared with Elizabeth and under the care of the same people.

Further, we conclude substantial evidence supports the juvenile court's finding Elizabeth is described by section 300, subdivision (a). According to the evidence, G.R. and Matthew sustained ongoing and repeated physical abuse while in Stephanie and Luis's care. When they were removed, they were bruised, scarred, burned and, in Matthew's case, extremely malnourished. Whether Stephanie directly inflicted all or part of the abuse, she and Luis are responsible for not protecting G.R. and Matthew from being abused by Astrid and for not obtaining nourishment for Matthew. In addition, there was evidence that Stephanie sought to hide the abuse by intimidating G.R. into lying. By their conduct, Stephanie and Luis demonstrated that a child in their care was at risk of



serious physical abuse either by commission or omission. The fact that Elizabeth had not been abused does not mean that she was not at risk.

We conclude Elizabeth was at a substantial risk of serious future injury based on the seriousness and ongoing nature of the injuries sustained by G.R. and Matthew and the environment of fear created by Stephanie. Having so concluded, we are unswayed by Stephanie and Luis's evidentiary challenges.

Luis contends G.R.'s interview was unreliable and the timing of Matthew's bruising was inconclusive. In essence, Luis asks this court to reweigh this particular evidence. However, as we stated above, our role is not to reweigh the evidence but to draw reasonable inferences in favor of the juvenile court's finding.

As to G.R.'s interview, the juvenile court recognized it was lacking in reliability but found it sufficiently credible to support a jurisdictional finding under section 300, subdivision (a) by the required standard of proof. We defer to the juvenile court's decision with respect to the weight and credibility of G.R.'s interview. We also defer to the juvenile court's decision with respect to the weight of Matthew's injuries and when they occurred. We also point out that Matthew was also extremely malnourished and there is strong evidence that he deteriorated to that condition while in Stephanie and Luis's care.

Further, Stephanie contends, even if she and Luis abused G.R. and Matthew, there is no evidence that abuse of one child will result in the abuse of another, citing *In re Maria R.* (2010) 185 Cal.App.4th 48 (*Maria R.*). In *Maria R.*, the appellate court held that sexual abuse of a female child by itself is insufficient to place a male child at risk. (*Id.* at p. 68.) However, the California Supreme Court in *I.J.* disapproved the reasoning of *Maria R.* and identified the severity of the sibling abuse rather than the child's gender as the focal point for determining the probability that the child would be at risk of similar abuse. The court stated:

“[T]he more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*I.J.*, *supra*, 56 Cal.4th at p. 778.)

Applying the rationale of *I.J.* to these facts, the risk that Elizabeth would suffer serious physical harm in Stephanie and Luis’s care was made more probable by the seriousness of the physical abuse suffered by G.R. and Matthew in their care. In other words, the severity of G.R. and Matthew’s abuse made it more necessary to protect Elizabeth whether she had suffered such abuse yet or not.

We conclude substantial evidence supports the juvenile court’s jurisdictional finding Elizabeth is a child described in section 300, subdivision (a).

## **II. Substantial Evidence Supports the Removal Order**

Luis and Stephanie contend there was insufficient evidence to support the juvenile court’s order removing Elizabeth from their custody. Specifically, Stephanie contends the court’s order was based on mere speculation that Elizabeth would be at risk of harm in their care. Additionally, she contends placing Elizabeth with Luis was a reasonable alternative to removal.

“At the dispositional hearing, ... there is a statutory presumption that the child will be returned to parental custody.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308.) In order to remove a child from parental custody, the juvenile court must find by clear and convincing evidence that removal is the only way to protect the physical or emotional well-being of the child. (§ 361, subd. (c)(1).) The juvenile court must also determine if reasonable efforts were made to prevent or eliminate the need for the child’s removal. (§ 361, subd. (d).)

Section 361, subdivision (c), the governing statute, provides in relevant part:

“A dependent child may not be taken from the physical custody of his or her parents ... with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence ...: [¶] (1) [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s ... physical custody.”

In determining whether to order a child removed from parental custody, the juvenile court is not required to find the child was harmed. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) The juvenile court only has to have some reason to believe that circumstances which place the child at a substantial risk of harm would continue in the future. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) The parent’s level of denial is an appropriate factor to consider when determining the risk to the child if placed with the parent. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.) Ultimately, the purpose of the removal statute is to avert harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

We review the juvenile court’s removal order for substantial evidence, bearing in mind the heightened burden of proof. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) We conclude substantial evidence supports the juvenile court’s order.

G.R. and Matthew suffered serious physical abuse. They were hit, burned and starved while in the exclusive care of their aunt, their mother or both. No one took responsibility for inflicting the abuse or protecting the children from it. Stephanie claimed they were protecting Astrid yet Stephanie both intimidated G.R. into denying that the abuse occurred and coerced her into accusing her mother. Whatever their part in G.R. and Matthew’s abuse, Stephanie and Luis demonstrated a child, including their own daughter, would be in substantial physical danger if placed in their care.

Stephanie contends the notion that she and Luis “would suddenly start abusing or neglecting Elizabeth” is mere speculation. Speculation is insufficient, she argues, to support the juvenile court’s removal order. To that end, Stephanie cites and briefly discusses several cases in which the appellate court reversed the juvenile court’s removal order.<sup>3</sup> She fails, however, to show that any of those cases are factually on point or legally instructive. Thus, we decline to discuss them.

Stephanie further contends the juvenile court could have placed Elizabeth with Luis as an alternative to removing her. The juvenile court could, however, reasonably find this option inadequate to protect Elizabeth given Luis’s refusal to comply with the safety plan.

We conclude substantial evidence supports the juvenile court’s removal order.

### **III. Summary Denial of the Section 388 Petition Was Not an Abuse of Discretion**

Stephanie contends the juvenile court abused its discretion in summarily denying her section 388 petition without an evidentiary hearing. We disagree.

Section 388, subdivision (a)(1) states in pertinent part: “Any parent or other person having an interest in a child who is a dependent child of the juvenile court ... may, upon grounds of change of circumstance or *new evidence*, petition the court in the same action in which the child was found to be a dependent child of the juvenile court ... for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.” (Italics added.) Subdivision (d) of section 388 states in pertinent part: “If it appears that the best interests of the child ... may be promoted by the proposed change of order, ... the court shall order that a hearing be held ....”

---

<sup>3</sup> Stephanie cites *In re James T.* (1987) 190 Cal.App.3d 58, *In re Steve W.* (1990) 217 Cal.App.3d 10, *In re Paul E.* (1995) 39 Cal.App.4th 996, and *In re Jasmine G.* (2000) 82 Cal.App.4th 282.

“To prevail on a section 388 petition, the moving party must establish that new evidence or changed circumstances exist so that the proposed change in the court’s order would promote the best interests of the child. [Citations.] Unless the moving party makes a prima facie showing of both elements, the petition may [be] denied without an evidentiary hearing. [Citation.] The determination of whether to change an existing order is ‘committed to the sound discretion of the juvenile court, and [its] ruling should not be disturbed on appeal unless an abuse of discretion is clearly established.’ [Citation.] An abuse of discretion occurs when the juvenile court has exceeded the bounds of reason by making an arbitrary, capricious or patently absurd determination.” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641-642.)

Stephanie contends the juvenile court’s interpretation of “new evidence” in this case was overly narrow and undermines the purpose of section 388. The meaning of “new evidence” in the context of section 388 was addressed in *In re H.S.* (2010) 188 Cal.App.4th 103 (*H.S.*).

In *H.S.*, the juvenile court exercised its dependency jurisdiction over a two month old and her one-year-old sibling following a contested jurisdictional hearing in which testimony and medical records and reports supported a finding the child’s rib and arm fractures constituted serious physical injury. The juvenile court denied the parents reunification services at the dispositional hearing. Three months later, the father filed a section 388 petition seeking the children’s return based on purported new evidence, the opinion of a doctor that there were explanations other than abuse for the child’s injuries. The juvenile court denied the section 388 petition without an evidentiary hearing reasoning that the new expert’s opinion was based on evidence available at the jurisdictional and dispositional hearing. The father appealed. (*H.S.*, *supra*, 188 Cal.App.4th at pp. 105-107.)

The appellate court in *H.S.* affirmed, holding that “the term ‘new evidence’ in section 388 means material evidence that, with due diligence, the party could not have presented at the dependency proceeding at which the order, sought to be modified or set aside, was entered.” (*H.S.*, *supra*, 188 Cal.App.4th at p. 105.) In that case, the court explained that the expert opinion was not based on new evidence but rather the same evidence available to the experts who testified at trial. “The new expert simply came to a different conclusion that, with due diligence, could have been presented at the jurisdiction hearing.” (*Id.* at p. 106.)

The *H.S.* court also held that not allowing the belated new opinion evidence to support a section 388 motion supported “the public policy calling for promptness and finality of juvenile dependency proceedings in order to protect the best interests of the child.” (*H.S.*, *supra*, 188 Cal.App.4th at p. 106.)

Here, as in *H.S.*, the Facebook posts Stephanie sought to introduce as new evidence existed at the time of the combined hearing and she failed to establish that she could not have obtained them by due diligence and presented them at the hearing. Thus, the juvenile court properly determined Stephanie failed to make a prima facie showing that new evidence existed and the juvenile court did not abuse its discretion in denying her an evidentiary hearing on her section 388 petition.

We find no error on this record and affirm.

#### **DISPOSITION**

We affirm the judgment.